

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

CHRISTINA M. SCHMIDT,

Plaintiff,

v.

BRANDON L. MATHIS,

Defendant.

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No. 4:19-CV-787-JCH

MEMORANDUM AND ORDER

Plaintiff has filed a civil suit and seeks leave to proceed in forma pauperis. Plaintiff is granted leave to proceed without payment of the filing fee. Also, the Court will direct plaintiff to show cause why this action should not be dismissed for lack of subject matter jurisdiction. *See* Fed. R. Civ. P. 12(h)(3).

Plaintiff alleges that defendant assaulted her on September 28, 2017. She seeks to bring this federal action under the federal criminal maritime assault statute 18 U.S.C. § 113(a)(6)-(7). Section 113 criminalizes assault “within the special maritime and territorial jurisdiction of the United States.”

Plaintiff alleges the assault occurred at 1 Spring Way Drive, Saint Peters, Missouri, which is not within the special maritime and territorial jurisdiction of the United States.¹ Moreover, to the extent that plaintiff is seeking the initiation of federal criminal charges against defendant, initiation of a federal criminal prosecution is a discretionary decision within the

¹ Title 18 U.S.C. § 7 defines the “special maritime and territorial jurisdiction of the United States,” examples of which include the high seas; a vessel registered under the laws of the United States; land reserved for a fort, magazine, arsenal, dockyard, or other needful building; and aircraft belonging to the United States. *See* 18 U.S.C. § 7.

executive branch and is not subject to judicial compulsion. *See Ray v. United States Dept. of Justice*, 508 F. Supp. 724, 725 (E.D. Mo. 1981); 28 U.S.C. § 547(1).

Federal courts are courts of limited jurisdiction. The Court has jurisdiction to hear cases involving the Constitution, laws, or treaties of the United States under 28 U.S.C. § 1331, and the Court can hear cases where diversity jurisdiction exists under 28 U.S.C. § 1332.

The instant action does not arise under the Constitution, laws, or treaties of the United States, so federal question jurisdiction pursuant to 28 U.S.C. § 1331 is inapplicable. Therefore, the Court may only hear this case if diversity jurisdiction exists. It does not appear that diversity jurisdiction exists because plaintiff and defendant are citizens of the same state. As a result, the Court will order plaintiff to show cause why this action should not be dismissed for lack of jurisdiction.

Accordingly,

IT IS HEREBY ORDERED that plaintiff's motion for leave to proceed in forma pauperis [ECF No. 2] is **GRANTED**.

IT IS FURTHER ORDERED that plaintiff must show cause no later than **April 25, 2019**, why this action should not be dismissed.

Dated this 4th day of April, 2019.

/s/ Jean C. Hamilton
JEAN C. HAMILTON
UNITED STATES DISTRICT JUDGE